

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 21 May 2007

BALCA Case No.: 2007-PER-00013
ETA Case No.: C-05172-09031

In the Matter of:

CLASSY DYEING & FINISHING,
Employer,

on behalf of

ODED AVRAHAM MORADI,
Alien.

Certifying Officer: Dominic Pavese
Chicago Processing Center

Appearances: Neda A. Zaman, Esquire
Zaman & Varzandeh, PC
Los Angeles, California
For the Employer

Gary M. Buff, Associate Solicitor
Harry L. Sheinfeld, Counsel for Litigation
Vincent C. Costantino, Senior Trial Attorney
Office of the Solicitor
Division of Employment and Training Legal Services
Washington, DC
For the Certifying Officer

Before: **Chapman, Wood and Vittone**
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. This matter arises under Section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(5)(A), and the "PERM" regulations found at Title 20, Part 656 of the Code of Federal Regulations.¹ The Employer applied for permanent alien labor certification on June 12, 2005 for the position of Textile Machine Repairer. (AF 9-28). The job requirements were a high school education and two years of experience in the job offered. (AF 10). On July 12, 2005, the Certifying Officer (CO) denied the application because, *inter alia*, the Form 9089 failed to indicate at Item J-13 the year the Alien completed the relevant education. (AF 6-8).

On July 27, 2005, the Employer's attorney filed a motion for reconsideration. (AF 4-5). In regard to the failure to list the year the Alien completed the relevant education, the motion stated "**Section J-13**, the response is: At any time a high school degree is completed is acceptable by the employer." (AF 4). The CO denied reconsideration in an April 2006 e-mail, in response to which the Employer indicated that it wanted BALCA to review the denial. (AF 3). On November 29, 2006, the CO issued a formal letter denying reconsideration and forwarding the matter to this Board. (AF 1-2). The Board issued a Notice of Docketing on December 7, 2006. The Employer did not file an appellate brief or statement of position. The CO filed an appellate brief on January 8, 2007, arguing that the Employer's failure to provide the date that the Alien completed high school was fatal to the application because the CO must be able to determine whether the job requirements specified in the Form 9089 are the Employer's actual minimum requirements for the job. Similarly, the CO must be able to determine whether the Alien is qualified for the position.

The Employer's motion for reconsideration clearly misconstrued the nature of the deficiency caused by the failure to complete Item J-13. Item J-13 is an inquiry into the Alien's qualifications for educational requirements of the job; it is not an inquiry into the date by which a U.S. applicant must have achieved the required education. As the CO

¹ The PERM regulations appear in the 2006 edition of the Code of Federal Regulations published by the Government Printing Office on behalf of the Office of the Federal Register, National Archives and Record Administration, 20 C.F.R. Part 656 (Revised as of Apr. 1, 2006).

argued in his Appellate Brief, the question goes to whether the Alien possessed the required education at the time that the Employer hired him, because if the Alien was hired without having yet obtained the education now required of U.S. applicants, the education requirement is not the Employer's actual minimum requirement for the job. *See* 20 C.F.R. § 656.17(i)(1). Moreover, the question goes to whether the Alien even possesses the required education. *See* 20 C.F.R. § 656.17(i)(4) (indicating that the CO will be "evaluating whether the alien beneficiary satisfies the employer's actual minimum requirements....").

Since the Employer never provided a date for completion of a high school education by the Alien, it cannot be determined whether the high school education requirement was the Employer's actual minimum requirement, or whether the Alien even completed high school and was himself qualified for the position. Thus, the CO properly denied certification.

ORDER

Based on the foregoing, **IT IS ORDERED** that the Certifying Officer's denial of labor certification in the above-captioned matter is **AFFIRMED**.

Entered at the direction of the panel by:

A

Todd R. Smyth
Secretary to the Board of Alien Labor
Certification Appeals

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk

Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW Suite 400
Washington, DC 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.